

700 GENERAL MAJOR OBJECTIVES

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701 Administrative Hearings

Philosophy

The goal and purpose of the Administrative Hearing process is to provide an avenue for an alleged perpetrator to challenge the conclusion of the Child and Family Services worker who has made a supported finding of one of the non-severe types of child abuse or neglect. This opportunity is provided through an informal hearing before an administrative law judge. This process is distinct from that used when a finding of severe abuse or neglect is challenged.

701.1 Right To Hearing For Alleged Perpetrators Of Non-Severe Abuse And Neglect

Major objectives:

Child and Family Services shall advise individuals of their hearing rights and assist them with the administrative hearing process.

Summary of the Law

Department of Human Services, Division of Child and Family Services, Rule R 512-25-1

A. The Division of Child and Family Services shall act in accordance with Section 62A-4a-409, and investigate all reports of child abuse, neglect, or dependency. Each investigation shall determine the validity of the report and make a supported or non-supported finding. This rule establishes an appeal for individuals who disagree with a Child and Family Services supported finding of abuse, neglect, or dependency in accordance with Federal law, 42 United States Code, Section 5106a.

Procedures

- A. Hearing opportunity: When a Child and Family Services worker makes a supported finding of non-severe abuse or neglect, the alleged perpetrator will be informed of their right to challenge that finding before an administrative law judge. The alleged perpetrator has responsibility to request the hearing from the Department of Human Services, Office of Administrative Hearings.
- B. Request for and Review of Documents: An alleged perpetrator has the right to review documents related to the finding made by Child and Family Services prior to a hearing. The documents will be provided only when a proper request is made using processes established under the Government Records Access and Management Act (GRAMA). All documents relevant to the worker's finding, which can be released to the alleged perpetrator under GRAMA, will be prepared and released sufficiently in advance of the hearing to allow the alleged perpetrator to prepare for the hearing. The Child and Family Services worker making the supported finding and his or her supervisor will assist in the process of compiling and preparing the documents for release.
- C. Internal Review of Findings: Upon receiving notice that a hearing has been requested, the worker making the supported finding will review the case with his or her supervisor or other person within their region designated to review such findings. If the Child and Family Services worker believes upon reviewing

71 the case that the supported finding was reached in error, the worker will ask that
72 the record be changed prior to the hearing.

73
74 D. Worker participation and Administrative support: The Child and Family
75 Services worker who made the original finding will appear at a hearing to
76 provide testimony and information to the administrative law judge and the
77 alleged perpetrator as appropriate. A supervisor or administrator will appear
78 with each worker at every hearing.

79
80 E. Appeal of the administrative law judge decision: If after a hearing the Child and
81 Family Services worker believes the administrative law judge reached an
82 incorrect conclusion, the worker, through their supervisor will request an appeal
83 to the juvenile court. This request must be communicated to the Office of the
84 Attorney General, Child Protection Division within 10 days of the date the
85 administrative law judge signs the final order overturning the Child and Family
86 Services worker's finding.

87
88 F. Effect of court proceedings: If the same allegations that underlie the Child and
89 Family Services worker's conclusions have already been adjudicated in a
90 juvenile, district, or justice court, and the alleged perpetrator has been found to
91 be responsible for acts that constitute abuse, neglect, or dependency, Child and
92 Family Services will not provide a hearing to the alleged perpetrator. When
93 these circumstances exist the Child and Family Services worker and his or her
94 supervisor, through an Assistant Attorney General will request that the Office of
95 Administrative Hearings dismiss the hearing request. The Child and Family
96 Services worker will nevertheless appear at a hearing scheduled by the
97 administrative law judge unless the case is dismissed by the Office of
98 Administrative Hearings.

99
100 G. Stay of Office of Administrative Hearings proceedings: When a district, juvenile,
101 or justice court is considering allegations relating to abuse, neglect, or
102 dependency against a person who is the subject of a supported finding, and that
103 person has requested a hearing before an administrative law judge, Child and
104 Family Services may request a "stay" in the Office of Administrative Hearings
105 proceedings. This does not limit the alleged perpetrator's rights and allows for
106 the Office of Administrative Hearings to consider the Child and Family Services
107 worker's finding at a later time. Child and Family Services will not ask for a stay
108 in the Office of Administrative Hearings proceeding unless there is a court case
109 underway at the time the request for hearing is made. Once a decision is made
110 by a court, the Child and Family Services worker will ask to have the stay lifted

and to have the case move forward. Where appropriate, Child and Family Services will use the findings made by the court to prove the accuracy of the Child and Family Services worker's finding.

H. Standard for proving supported finding was appropriate: By statute, the standard to be applied by the administrative law judge in reviewing the Child and Family Services worker's conclusion is the same as that which is applied by the worker when reaching a conclusion. That is, whether there is a reasonable basis to conclude that abuse, neglect, or dependency occurred based on the evidence known to or available to the Child and Family Services worker at the time of the original finding.

I. The administrative law judge is required to make a separate finding regarding every allegation of non-severe abuse, neglect, or dependency that the alleged perpetrator challenges. Allegations of severe abuse shall not be heard before an administrative law judge. Allegations of non-severe abuse or neglect may be heard together with allegations of severe abuse in the juvenile court.

J. If the case is appealed to juvenile court, the court will apply the same standard as applied by the administrative law judge.

K. Whenever a worker receives a decision from the Office of Administrative Hearings they should determine whether it has also been sent to the Child and Family Services Administrative Hearing Tracker. If it has not they must forward a copy to the tracker. The tracker will ensure that the changes to the information system are made if the decision has been overturned.

L. Once a decision is made the worker should enter the information into the SAFE system under the Hearings tab. If the decision changes the finding originally entered in SAFE the Administrative Hearing Tracker will be responsible for ensuring the change is made.

M. Child and Family Services workers should be aware that the Office of Administrative Hearings might dismiss a hearing request on certain allegations but not on all allegations. This might happen when some of the claims but not others have been decided by a court.

N. A stay in administrative proceedings should only be asked for or agreed to when there is a court proceeding underway at the time the request for a hearing or a stay of hearing is made. Child and Family Services workers should ask for a stay

151 only when the court proceeding that is underway involves Child and Family
152 Services as a party. There is no requirement for Child and Family Services to
153 stay its proceedings while a criminal or delinquency proceeding moves forward.
154

702 Child And Family Services Employees As Out-Of-Home Caregivers

Major objectives:

Child and Family Services employees may be licensed to provide out-of-home care for the Division. Placement of a child with a Child and Family Services employee must be in the best interest of the child. Child and Family Services staff will not receive preferential consideration for placements.

Summary of the Law

Department of Humans Services, Office of Licensing, Rule R501-12-6A.

5. Division employees shall not be approved as foster parents to care for children in the custody of their respective Divisions. An employee may provide care for children in the custody of a different Division with approval of the Regional Director in accordance with DHS conflict of interest major objectives.

Procedures

- A. A Child and Family Services employee wanting to apply to be an out-of-home caregiver must:
1. Receive approval from the Region Director of the region in which the worker is employed.
 2. Any conflict of interest matters must be addressed prior to approval of the waiver.
 3. Submit a completed waiver request form to the Office of Licensing.
 4. The case will be staffed in another Child and Family Services region for approval or denial of placement.
 5. If the Office of Licensing denies the waiver, an appeal process is available through the Department of Human Services Deputy Director and/or the Office of Administrative Hearings.

703 Interstate Compact On Placement Of Children

Major objectives:

Child and Family Services shall adhere to the Interstate Compact on Placement of Children.

Summary of the Law

62-4a-701 – 709 Interstate Compact on Placement of Children

- A. It is the purpose and principles of the state to cooperate with each state in the interstate placement of children so that:
1. Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide necessary and desirable care.
 2. The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.
 3. The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.
 4. Appropriate jurisdictional arrangements for the care of the children will be promoted.

Definitions

As used in this compact:

- A. "Child" means a person who, by reason of minority, is legally subject to parental, guardianship, or similar control.
- B. "Sending agency" means a party state, officer, or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, Indian tribe, charitable agency, or other entity which sends, brings, or causes to be sent or brought any child to another party state.
- C. "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

- D. "Placement" means the arrangement for the care of a child in a family, adoptive, or boarding home, or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective, or epileptic or any institution, primarily educational in character, and any hospital or other medical facility.

Conditions for Placement

- A. No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.
- B. Prior to sending, bringing, or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:
1. The name, date, and place of birth of the child.
 2. The identity and address or addresses of the parents or legal guardian.
 3. The name and address of the person, agency, or institution to or with which the sending agency proposes to send, bring, or place the child.
 4. A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.
 5. Any public officer or agency in a receiving agency state which is in receipt of a notice pursuant to paragraph B of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and principles of this compact.
 6. The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

Retention of Jurisdiction

- A. The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment, and disposition of the child which it would have had if the child had remained in the

266 sending agency's state, until the child is adopted, reaches majority, becomes self-
267 supporting, or is discharged with the concurrence of the appropriate authority in
268 the receiving state. Such jurisdiction shall also include the power to effect or
269 cause the return of the child or its transfer to another location and custody
270 pursuant to law. The sending agency shall continue to have financial
271 responsibility for support and maintenance of the child during the period of the
272 placement. Nothing contained herein shall defeat a claim of jurisdiction by a
273 receiving state sufficient to deal with an act of delinquency or crime committed
274 therein.

275
276 B. When the sending agency is a public agency, it may enter into an agreement with
277 an authorized public or private agency in the receiving state providing for the
278 performance of one or more services in respect of such case by the latter as agent
279 for the sending agency.

280
281 C. Nothing in this compact shall be construed to prevent any agency authorized to
282 place children in the receiving agency from performing services or acting as
283 agent in the receiving agency jurisdiction for a private charitable agency of the
284 sending agency; nor to prevent the receiving agency from discharging financial
285 responsibility for the support and maintenance of a child who has been placed
286 on behalf of the sending agency without relieving the responsibility set forth in
287 paragraph A.

288 289 Institutional Care of Delinquent Children

290 A child adjudicated delinquent may be placed in an institution in another party
291 jurisdiction pursuant to this compact, but no such placement shall be made unless the
292 child is given a court hearing on notice to the parent or guardian with opportunity to be
293 heard, prior to his or her being sent to such other party jurisdiction for institutional care
294 and the court finds that:

- 295 a. Equivalent facilities for the child are not available in the sending
296 agency's jurisdiction; and
297 b. Institutional care in the other jurisdiction is in the best interest of the
298 child and will not produce undue hardship.

299 300 Compact Administrator

301 The executive head of each jurisdiction party to this compact shall designate an officer
302 who shall be general coordinator of activities under this compact in his jurisdiction and
303 who, acting jointly with like officers of the party jurisdictions, shall have power to
304 promulgate rules and regulations to carry out more effectively the terms and provisions
305 of this compact.

Limitations

This compact shall not apply to:

- A. The sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state.
- B. Any placement, sending, or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party or to any other agreement between said states which has the force of law.

704 Shelter Placements

704.1 Shelter Placement

Major objectives:

- A. The Child and Family Services worker shall visit the child in shelter within 48 hours of removal to assess the child's adjustment to the placement, needs, and well-being.
- B. Following the 48-hour visit, a Child and Family Services worker shall continue to visit the child in shelter once per week.
- C. Once the ongoing worker has been assigned, that worker will be responsible to complete the weekly visits.
- D. The Child and Family Services worker shall offer the parents a visit with the child within three working days of removal, if appropriate.
- E. Any medical needs for a child in a shelter placement shall be addressed.
- F. A CHEC physical shall be completed within five working days from the time the child is placed in protective custody.
- G. The Child and Family Services worker shall contact the Indian Child Welfare Specialist if a Native American child is placed in shelter.

Summary of the Law

78-3a-307

(7) When the court orders that a child be removed from the custody of his parent and does not vest custody in another parent or relative under this section, the court shall order that the child be placed in the temporary custody of the Division of Child and Family Services, to proceed to adjudication and disposition and to be provided with care and services in accordance with this chapter and Title 62A, Chapter 4a, Child and Family Services.

Procedures

- A. Based on the outcome of the shelter hearing, an ongoing case shall be opened within five days.

- 359 B. The placement information for each child shall be documented in SAFE within
360 five working days of removal or change in placement.
361
- 362 C. If a child is taken into protective or voluntary custody and placed in shelter, the
363 Child and Family Services worker shall complete requirements found in CPS
364 Removal Principles and Guidelines.
365
- 366 D. The child shall not remain in shelter for more than 14 days. The Child and
367 Family Services worker shall coordinate with the local resource family consultant
368 to locate a placement.
369
- 370 E. If a placement has not been found within 14 days, the Child and Family Services
371 worker shall review the child's case weekly with the Shelter Placement
372 Screening Committee.
373

704.2 Voluntary Placements

Major objectives:

The parents or guardian of a child may request that Child and Family Services place their child in a voluntary temporary out-of-home placement, or a Child and Family Services worker may offer a voluntary temporary out-of-home placement. A voluntary out-of-home placement shall only be used when the parents or guardian can have unrestricted access to the child without presenting a risk to the health, safety, or well-being of the child.

All voluntary foster care placements shall be reviewed every 45 days with the Shelter Placement Screening Committee. A child needing to remain in a voluntary out-of-home placement beyond 180 days may only do so through a court order that finds that continued placement is in the best interest of the child.

Summary of the Law

62A-4a-106. Services provided by division.

(1) The division may provide, directly or through contract, services that include, but are not limited to, the following:

(d) out-of-home placements for minors;

Procedures

- A. Ensure that the parent or guardian has explored all possible options for placement of the child with relatives, friends, neighbors, etc. prior to initiating a placement through Child and Family Services.
- B. Before a child is accepted for foster care placement on a voluntary basis, the parents or guardians must express a willingness to involve themselves in a time-limited child and family plan. The parents, child, and worker will develop a plan (typically 45 days) to resolve the crisis and return the child home within that time period.
- C. Parents will be notified prior to the placement that they are required to pay child support to the Office of Recovery Services while the child is in the voluntary out-of-home placement to help defray costs of the child's care.
- D. A written voluntary placement agreement must be in place at the time a child enters care and specifies, at a minimum, the legal status of the child and the rights and obligations of the parents, the child, and Child and Family Services

while the child is in placement. The time period that the agreement is in effect for 45 days.

- E. The family must provide documentation of medical coverage and understand that they are responsible for the medical costs. The parents must also provide all information necessary to make a Title IV-E and Medicaid eligibility determination for the child while in the voluntary out-of-home placement.
- F. The family must provide the child's current medical provider of the child's current health and immunization status, or arrange for the child to have a CHEC screen to insure the child's health needs are current while in the voluntary out-of-home placement.
- G. At any time, parents may terminate the voluntary placement and have their child return home.
- H. Payment for initial clothing or other special items will be based upon the parents' ability to pay. These items may be paid by Child and Family Services at the discretion of the supervisor and Region Director (or designee) and based on the needs of the child.
- I. In situations where the crisis is not resolved and it appears the child will require ongoing foster care, the worker will petition the court for temporary custody. If the child needs to remain in out-of-home care for longer than 180 days, the worker may petition the court for custody prior to the end of the voluntary placement period.

704.3 Domestic Violence Shelters

Major objectives:

Shelter services are offered to all persons meeting the definition of co-habitant who either voluntarily or through a court order seek domestic violence services.

The Child and Family Services caseworker may coordinate and link domestic violence victims with emergency shelter placements and services.

Summary of the Law

62A-4a-106. Services provided by division.

(1) The division may provide, directly or through contract, services that include, but are not limited to, the following:

(j) domestic violence services.

Procedures:

Victim and Dependent Services:

- A. Emergency Shelter: A 24-hour shelter care facility that provides supervision for families.
- B. Crisis Counseling Services shall be made available to a domestic violence victim and dependents upon request
- C. Alternate Crisis Housing: May be in motels, community shelters, or other comparable facilities. *Refer to Domestic Violence Principles 600 Guidelines for victim and dependant services and alternative crisis housing.
- D. If the placement in a domestic violence shelter is made by the Child and Family Services caseworker as an alternative to removing the children from the parent or guardian's custody, a child and family team meeting shall be coordinated within three working days. (This meeting will include domestic violence shelter staff.)
- E. Shelter staff will provide information to the Child and Family Services caseworker when the family plans to leave the shelter facility.

704.4 Emergency Foster Care Placements

Major objectives:

When a child is removed from a foster care placement, the Child and Family Services worker may place a child in a temporary emergency foster placement. Shelter homes or facilities may be utilized.

Emergency Foster Care Placements must be staffed with supervisors.

Summary of the Law

62A-4a-106. Services provided by division.

(1) The division may provide, directly or through contract, services that include, but are not limited to, the following:

(d) out-of-home placements for minors;

Procedures:

A. Emergency foster care placements may be used:

1. When the Child and Family Services worker has made the determination that the child's out-of-home placement may be unsafe and removal is necessary.
2. When a more permanent placement cannot be identified.
3. When determined to be in the best interest of the child.

B. When emergency foster care placements are initiated, notification needs to be provided to:

1. The parents.
2. The Assistant Attorney General.
3. The Guardian ad Litem.
4. To Juvenile Court.

C. Following an emergency foster care placement, a child and family team meeting shall be convened within three working days.

D. The Child and Family Services worker shall visit the child in the temporary placement within 48 hours.

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